

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

**MARTIN N. BELL and
LT. GEN. JAMES LONGSTREET CHAPTER of
MILITARY ORDER OF THE STARS AND BARS
GEORGIA SOCIETY INC.,
Plaintiffs**

CASE: 5:20-cv-00338

VS

**MACON-BIBB COUNTY, MAYOR ROBERT REICHERT,
AL TILLMAN, LARRY SCHLESINGER, ELAINE LUCAS,
BERT BIVINS III, VIRGIL WATKINS, JR.,
Defendants**

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO REMAND

COME NOW Plaintiffs MARTIN N. BELL and LT. GEN. JAMES LONGSTREET CHAPTER MILITARY ORDER OF THE STARS AND BARS GEORGIA SOCIETY INC., (“Plaintiffs”), by and through its undersigned counsel, and in support of its Motion to Remand this case to the Superior Court of Bibb County, Georgia, asserts:

1. The Courts of Georgia are the proper and appropriate forums for the adjudication of the issues involved in this and similar cases being litigated throughout the State , at least one of which (Newton County) has already been appealed to the Court of Appeals of Georgia.

2. The inclusion by Plaintiffs of Count II 42 U.S.C. § 1983 claims although providing an original jurisdiction basis for removal have been dropped by Plaintiffs. In any case, such claims never were the primary basis of the original Complaint. The primary claim was and is based on O.C.G.A. 50-3-1 's prohibition of arbitrary, capricious, and malignant moving, obscuring, and defacement of public memorials of *all* sorts—including those commemorating the military service of soldiers and sailors during the war of 1861-1865.
3. In the Fourth Circuit case of *Lontz v. Tharp* , 413 F 3d 435, 444 (2005) the Court noted that “[r]emoval statutes do not create jurisdiction. They are instead a mechanism to enable federal courts to hear the cases that are already within their original jurisdiction.” Surely, this means within their *primary and appropriate* jurisdiction—jurisdiction now mooted due to Plaintiffs dropping their federal claims.
4. Pursuant to 28 U.S. C. §1331 “the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States” 28 U.S.C. §1331. Federal District Courts have subject matter jurisdiction over cases that raise federal questions. The case at bar was never about federal questions—unless it be said

that Counsel’s original Complaint by suffering from trying to “add in the kitchen sink” provided Defendants a clever way to play “gotcha!” and remove to the less appropriate federal forum.

5. The court has the discretion to remand the case to Bibb County. A federal court retains discretion to remand a removed case if the federal law claims are no longer in the case and only the supplemental state law claims remain. *Hartman v. Cadmus-Cenveo Co*, Civ. No. 13-7494, 2014 U.S. Dist. LEXIS 131517 (E.D. Pa. Sept. 19, 2014).

In this case the state law claims are not merely supplemental—they are primary.

6. Factors for Exercise of Discretion When exercising this discretion a federal court should consider and weigh the values of judicial economy; convenience; fairness; and comity in deciding whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit *in its early stages* and only state-law claims remain, the federal court should decline the

exercise of jurisdiction. [from YOU RECEIVED A NOTICE OF
REMOVAL TO FEDERAL COURT–NOW WHAT? A Case Study Presented
by Pamela L. Shipman, Esq. & Sasha B. Coffiner, Esq.,

{<https://www.lycolaw.org/uploads/CLE materials/20170419federal.pdf>.}

(emphasis supplied)

7. *Beard v. Lehman Bros. Holdings, Inc.*, 458 F. Supp. 2d 1314, 1317

(M.D. Ala. 2006) recognized that “[a] court must strictly construe
the requirements of the removal statute, as removal constitutes an
infringement on state sovereignty.”

This honorable Court has the inherent authority to decline jurisdiction of this
matter and to dismiss the removal to federal court and remand the matter to
the Superior Court of Bibb County wherein all parties can be assured of
receiving fair and scholarly treatment of the issues involved in this case.

Respectfully argued, this 22nd day of September, 2020.

/s/ Walker L. Chandler

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CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I submitted this

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to the Clerk of Court using the CM/ECF system, which will automatically send electronic mail notification of such filing to counsel of record.

Duke R. Groover

Lee M. Gillis

S. Elizabeth Hall

Attorneys for Defendants

This 22nd day of September, 2020.

/s/ Walker L. Chandler

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